

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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RIGHTHAVEN, LLC, a Nevada limited
liability company,

Plaintiff,

vs.

INDUSTRIAL WIND ACTION CORP., a New
Hampshire corporation; and JONATHON S.
LINOWES, an individual resident of New
Hampshire,

Defendants.

Case No.: 2:10-cv-601-RLH-PAL

ORDER

(Motion to Dismiss—#9)

Before the Court is Defendants Industrial Wind Action Corp. and Jonathon S. Linowes' (collectively "Industrial Wind") **Motion to Dismiss** (#9), filed May 26, 2010. The Court has also considered Plaintiff Righthaven, LLC's Opposition (#13), filed June 25, 2010, and Industrial Wind's Reply (#14), filed July 12, 2010 along with the accompanying addendum (#15) filed July 16, 2010.

BACKGROUND

This case stems from alleged copyright violations by Industrial Wind of various news articles to which Righthaven obtained copyrights and accrued causes of action. Industrial

1 Wind runs a website out of Lisa Lenowe's home in Lyman, New Hampshire. The website
 2 disseminates news about wind energy to any interested party, regardless of that person's location.
 3 It does this by linking to and posting various news articles from around the country. Industrial
 4 Wind does no commercial business and does not have a physical presence in Nevada. Allegedly,
 5 and defendant's appear to admit, Industrial Wind posted articles on its website from the Las Vegas
 6 Review Journal, the Ely Times and other Nevada newspapers. Righthaven now owns the
 7 copyrights and accrued causes of actions to these works.

8 On April 27, 2010, Righthaven filed suit in this Court alleging copyright
 9 infringement. (Dkt. #1, Compl.) On May 26, Industrial Wind filed its Motion to Dismiss for Lack
 10 of Jurisdiction. (Dkt. 9) Righthaven responded (Dkt. #13) on June 25 and Industrial Wind replied
 11 on July 12 (Dkt. #14). For the reasons discussed below, Industrial Wind's Motion to Dismiss for
 12 Lack of Jurisdiction is denied.

13 DISCUSSION

14 Industrial Wind originally brought its motion to dismiss for lack of subject matter
 15 jurisdiction under Fed. R. Civ. P. 12(b)(1), lack of personal jurisdiction under Rule 12(b)(2), and
 16 for failure to state a claim under Rule 12(b)(6). In its reply, however, Industrial Wind withdrew
 17 its 12(b)(1) and 12(b)(6) arguments. The Court will, therefore, only address personal jurisdiction.

18 I. Personal Jurisdiction

19 To determine personal jurisdiction, the Ninth Circuit applies the effects test of
 20 *Calder v. Jones*, 465 U.S. 783 (1984). Citing and applying the *Calder* test, the Ninth Circuit has
 21 found that where a defendant "willfully infringed copyrights owned by [the plaintiff], which, as
 22 [the defendant] knew, had its principal place of business in the Central District [of California],
 23 "[t]his fact alone is sufficient to satisfy the 'purposeful availment' requirement." *Columbia*
 24 *Pictures Television v. Krypton Broadcasting of Birmingham, Inc.*, 106 F.3d 284, 289 (9th Cir.
 25 1994), *overruled on other grounds sub nom. by Feltner v. Columbia Pictures Television*, 523 U.S.
 26 340 (1998). It is common knowledge to those reading or examining the Ely Times, the Las Vegas

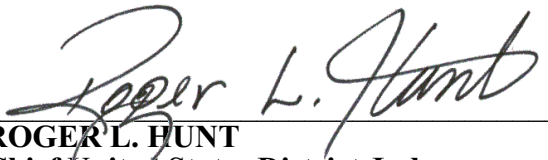
1 Review Journal and other such papers that they are published and distributed, respectively, in Ely,
2 Nevada, Las Vegas, Nevada and their other respective cities. These newspapers assigned their
3 copyrights and rights to seek redress for past, present and future infringement to Righthaven.
4 Accordingly, this Court has jurisdiction over the Defendants based on the allegations of the
5 complaint.

6 **CONCLUSION**

7 Accordingly, and for good cause appearing,

8 IT IS HEREBY ORDERED that Industrial Wind's Motion to Dismiss for Lack of
9 Jurisdiction (#9) is DENIED.

10 Dated: September 23, 2010

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13 **ROGER L. HUNT**
14 **Chief United States District Judge**
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